

- (1) Claimant started working for the respondent as a taxicab driver on September 11, 1997.

(2) Before claimant was qualified as a taxicab driver, he had to pass a drivers test and obtain a taxicab drivers license from the City of Wichita.

(3) Claimant also was required by the respondent to pass a criminal record background check.

(4) The respondent provided claimant with on-the-job training which consisted of claimant driving a shift with one of respondent's experienced taxicab drivers.

(5) Admitted into evidence at the preliminary hearing was a cab driver's training check list signed by the claimant on September 9, 1997, which among other items indicated claimant was an independent contractor.

(6) The respondent notified claimant, before he started work, that he was an independent contractor and no state or federal taxes would be deducted from his earnings.

(7) The respondent leased claimant a taxicab on a per shift basis for \$46 plus \$4 for cost of a bond. The \$4 bond cost was paid until it totaled \$500 for the deductible amount of the liability insurance provided by respondent for the leased taxicab.

(8) For the \$46 per shift lease amount paid by the claimant, he received a taxicab maintained by the respondent and identified as owned by the respondent. Additionally, claimant was assigned a zone of the city to operate the taxicab and respondent, through its dispatchers, supplied claimant with customers.

(9) The fares claimant charged customers were regulated by City Ordinance.

(10) The respondent did not receive any portion or have the drivers account for the amount of fares they received from the customers.

(11) Claimant worked the shift from 12:00 a.m. until 12:00 p.m. anywhere from 5 to 6 days per week. Claimant was not required to work the full shift nor was he required to work an exact number of days per week.

(12) The respondent required the claimant to wash his taxicab once per week at his own expense and maintain a clean personal appearance. Additionally, respondent had the right to terminate the relationship with claimant if he used alcohol or drugs on the job or was convicted of driving while under the influence of alcohol or drugs.

(13) On October 29, 1997, claimant was injured in an automobile accident while driving respondent's taxicab.

Conclusions of Law

(1) In order for the claimant and the respondent to be subject to the provisions of the workers compensation act, there has to be an employer/employee relationship. See K.S.A. 1997 Supp. 44-505(a).

(2) The primary test used by the courts in determining whether the employer/employee relationship exists is whether the employer has the right of control and supervision over the work of the alleged employee and the right to direct the manner in which the work is to be performed, as well as, the result which is to be accomplished. It is not the actual interference or exercise of the control by the employer, but the existence of the right or authority to interfere or control, which renders one a servant rather than an independent contractor. Wallis v. Secretary of Kans. Dept. of Human Resources, 236 Kan. 97, 689 P.2d 787 (1984).

(3) The respondent cites the case of Martin v. Wichita Cab Co, 161 Kan. 510, 170 P.2d 147 (1946) as authority for its contention that claimant was an independent contractor and not an employee of the respondent. Under a similar factual situation, the Kansas Supreme Court held in Martin that a taxicab driver was an independent contractor of the taxicab company instead of an employee. However, the Martin case was determined according to regulations promulgated by the commissioner of the internal revenue which provided a definition of employment and not in accordance with the workers compensation act.

(4) The Appeals Board concludes the record as a whole supports the Administrative Law Judge's finding that claimant was an employee of the respondent and not an independent contractor. This conclusion is supported by the fact that respondent's business was transporting customers from place to place primarily in the city of Wichita, Kansas. The taxicab driver was an intricate and necessary part of that business. Respondent had the right to control the drivers by its authority to hire and terminate the relationship for violation of certain rules such as driving while using either alcohol or drugs. Other factors that support this conclusion are that respondent provided the taxicabs, principally maintained the taxicabs, and provided the drivers with customers to transport for fares.

(5) The Appeals Board concludes, although the respondent's income was not directly tied to claimant's earnings, the claimant, nevertheless, paid the amount charged by the respondent to lease the taxicab from such earnings. In a case with similar facts as this case, and decided after Martin, the Kansas Supreme Court held that the taxicab drivers were employees of the owner of the taxicab company and were not independent contractors under the Kansas Employment Security Law. Read v. Warkentin, Commissioner, 185 Kan. 286, 341 P.2d 980 (1959). Therefore, the Appeals Board finds the only difference in that case and the case at hand is the fact the owner of the taxicab company received 60 percent of the taxicab drivers' fares as the amount paid for the lease instead of an amount certain paid to lease the taxicab.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that Administrative Law Judge Nelsonna Potts Barnes' June 15, 1998, preliminary hearing Order, should be, and is hereby, affirmed in all respects.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of August 1998.

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BOARD MEMBER

c: W. Walter Craig, Wichita, KS  
William L. Townsley III, Wichita, KS  
Nelsonna Potts Barnes, Administrative Law Judge  
Philip S. Harness, Director